

Thursday 12-6-01

## 2001 BILL

RM NR

D 1012

stays

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- 1 AN ACT *to renumber* 224.71 (1c); *to amend* 224.72 (4m) (title), 224.72 (4m) (a)  
 2 (title), 224.72 (4m) (b) (title), 224.72 (5) (b), 224.77 (1m) (a), 224.80 (1) and  
 3 224.80 (2) (a) 1; and *to create* 224.71 (1d), 224.72 (4m) (c), 224.72 (7) (c) 3.,  
 4 224.72 (7p) and 224.79 of the statutes; **relating to:** qualifications for a  
 5 banker or mortgage mortgage broker registration, consumer mortgage brokerage agreements,  
 6 granting rule making authority, and providing a penalty.

**Analysis by the Legislative Reference Bureau**

Current law requires mortgage brokers to be registered with the division of banking in the department of financial institutions (division). Generally, a mortgage broker is a person who, on behalf of another person and for a commission, finds a loan that is secured by a mortgage. Current law does not require an applicant for a mortgage broker registration to have any specific knowledge with regard to the laws and regulations relating to mortgage brokering.

This bill requires an applicant for a mortgage broker registration to satisfactorily complete an examination in the law of mortgage brokering. Under the bill, any person who is currently registered as a mortgage broker, mortgage banker, or loan originator (generally, a person who finds a loan on behalf of a mortgage broker or mortgage banker) is exempt from the examination requirement. This bill also requires a mortgage broker to receive at least 16 hours of education in the law of mortgage brokering during each two-year registration period. The bill permits a

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 ANALYSIS

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person other than the division to administer the required examination and provide the required education. The division, by rule, must establish requirements for the approval of the content of the examination and the curriculum of the education and for the approval of any persons other than the division who administer the examination or provide the education.

This bill also requires every brokerage agreement between a mortgage broker and a consumer to be in writing, in the form prescribed by rule of the division, and to contain all information required by rule of the division. Under the bill, the division must promulgate these rules for the purpose of facilitating the comparison of similar charges and total charges assessed by different mortgage brokers. The bill also requires a mortgage broker to give a consumer a disclosure statement which contains a brief explanation of the relationship between the consumer and the mortgage broker under the brokerage agreement and the manner in which the mortgage broker may be compensated, and any additional information required by rule of the division. The mortgage broker must explain the content of the disclosure statement and ensure that the consumer initials or signs the statement, acknowledging that the consumer has read and understands the statement. Under the bill, a consumer generally means an individual who seeks or acquires mortgage brokerage services for personal, family, or household purposes. Current law does not contain any similar provisions with regard to mortgage brokers.

This bill also raises the maximum potential forfeiture (civil penalty) for certain violations of the mortgage brokering law from \$1,000 to \$2,000, the maximum potential fine and imprisonment (criminal penalties) for acting as a mortgage broker without a valid registration from \$1,000 and six months to \$2,000 and nine months, and the maximum potential liability of a mortgage broker in certain private causes of action from \$1,000 to \$2,000.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           SECTION 1. 224.71 (1c) of the statutes is renumbered 224.71 (1e).

2           SECTION 2. 224.71 (1d) of the statutes is created to read:

3           224.71 (1d) "Consumer" means a person other than an organization, as defined  
4           in s. 421.301 (28), who seeks or acquires mortgage brokerage services for personal,  
5           family, or household purposes.

6           SECTION 3. 224.72 (4m) (title) of the statutes is amended to read:

7           224.72 (4m) (title) ADDITIONAL REQUIREMENT REQUIREMENTS FOR MORTGAGE

8           BROKER APPLICANT.

## BILL

1           **SECTION 4.** 224.72 (4m) (a) (title) of the statutes is amended to read:

2           224.72 (4m) (a) (title) ~~With a~~ Special requirement for applicant with bona fide  
3 office.

4           **SECTION 5.** 224.72 (4m) (b) (title) of the statutes is amended to read:

5           224.72 (4m) (b) (title) ~~Without a~~ Special requirement for applicant without  
6 bona fide office.

7           ~~**SECTION 6.** 224.72 (4m) (c) of the statutes is created to read:~~

8           ~~224.72 (4m) (c) *Competency examination.* In addition to the requirements of~~  
9 ~~sub. (2) and pars. (a) and (b), as applicable, and except as otherwise provided under~~  
10 ~~this paragraph, an applicant for registration as a mortgage broker shall~~  
11 ~~satisfactorily complete an examination in the law of mortgage brokering, consistent~~  
12 ~~with rules promulgated by the division under sub. (7p). If the examination is~~  
13 ~~administered by a person other than the division, the applicant shall submit to the~~  
14 ~~division evidence satisfactory to the division that the applicant has satisfactorily~~  
15 ~~completed the examination. This paragraph does not apply to an applicant who~~  
16 ~~holds a certificate of registration as a mortgage banker, mortgage broker, or loan~~  
17 ~~originator, issued by the division, for at least 3 years preceding the date of~~  
18 ~~application.~~

19           **SECTION 7.** 224.72 (5) (b) of the statutes is amended to read:

20           224.72 (5) (b) *Mortgage banker and mortgage broker.* Except as provided in sub.  
21 (7m), upon receiving a properly completed application for registration as a mortgage  
22 banker or a mortgage broker, and the fee specified in rules promulgated under sub.  
23 (8) and ~~satisfactory evidence of~~ upon an applicant's compliance with subs. (4) and  
24 (4m), as applicable, the division may issue to the applicant a certificate of  
25 registration as a mortgage banker or mortgage broker.

## BILL

to 5.

each principal representative designated under  
sub. (4m) (d) and each loan originator ~~employed~~  
~~by the mortgage broker~~ has successfully completedSECTION 8. 224.72 (7) (c) 3 of the statutes ~~is~~ created to read:

224.72 (7) (c) 3. Submit evidence that is satisfactory to the division that, during  
the registration period, ~~the mortgage broker has received~~ <sup>2 years preceding the date of application</sup> at least ~~18~~ <sup>14</sup> hours of  
education ~~in the law of mortgage brokering~~ consistent with rules promulgated by the  
division under sub. (7p). ~~If the education received by the mortgage broker was  
provided by the division, the mortgage broker need not submit evidence of receipt to  
the division.~~ <sup>covering primary and subordinate mortgage financing transactions and the  
provisions of this ~~chapter~~ <sup>subchapter</sup></sup>

SECTION 9. 224.72 (7p) of the statutes is created to read:

224.72 (7p) RULES FOR COMPETENCY EXAMINATION AND CONTINUING EDUCATION  
REQUIREMENTS. The division shall promulgate rules establishing requirements for  
~~the approval of~~ all of the following:

- (a) The content of examinations in the law of mortgage brokering under ~~sub. (4m) (c)~~ <sup>(4) (e) and</sup> <sup>Curricula</sup> of education under sub. (7) (c) 3. <sup>(b) 3. and</sup> <sup>sub.</sup>
- (b) Any persons other than the division who administer examinations under <sup>The approval of</sup> <sup>Subs. (4) (e) or</sup> sub. (4m) (c) or provide education under sub. (7) (c) 3. <sup>(b) 3. or</sup>

SECTION 10. 224.77 (1m) (a) of the statutes is amended to read:

224.77 (1m) (a) The division may assess against a person who is registered  
under this chapter a forfeiture of not more than \$1,000 \$2,000 for each violation  
enumerated under sub. (1) (a) to (o) or (r).

SECTION 11. 224.79 of the statutes is created to read:

**224.79 Consumer mortgage brokerage agreements and consumer disclosures.** (1) FORM AND CONTENT OF CONSUMER MORTGAGE BROKERAGE AGREEMENTS.  
Every contract between a mortgage broker and a consumer under which the  
mortgage broker agrees to provide brokerage services to the consumer shall be in  
writing, in the form prescribed by rule of the division, and shall contain all

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1 information required by rule of the division. The division shall promulgate rules to  
2 administer this subsection. The division shall design these rules to facilitate the  
3 comparison of similar charges and total charges assessed by different mortgage  
4 brokers.

5 (2) CONSUMER DISCLOSURE STATEMENT. Before entering into a contract with a  
6 consumer to provide brokerage services, a mortgage broker shall give the consumer  
7 a copy of a consumer disclosure statement, explain the content of the statement, and  
8 ensure that the consumer initials or signs the statement, acknowledging that the  
9 consumer has read and understands the statement. The consumer disclosure  
10 statement shall contain a brief explanation of the relationship between the consumer  
11 and the mortgage broker under the proposed contract, a brief explanation of the  
12 manner in which the mortgage broker may be compensated under the proposed  
13 contract, and any additional information required by rule of the division. The  
14 division shall promulgate rules to administer this subsection and, by rule, shall  
15 specify the form and content of the consumer disclosure statement required under  
16 this subsection.

17 SECTION 12. 224.80 (1) of the statutes is amended to read:

18 224.80 (1) PENALTIES. A person who violates s. 224.72 (1m) may be fined not  
19 more than ~~\$1,000~~ \$2,000 or imprisoned for not more than ~~6~~ 9 months or both. The  
20 district attorney of the county where the violation occurs shall enforce the penalty  
21 under this subsection on behalf of the state.

22 SECTION 13. 224.80 (2) (a) 1. of the statutes is amended to read:

## BILL

## SECTION 13

1           224.80 (2) (a) 1. Twice the amount of the cost of loan origination connected with  
2           the transaction, except that the liability under this subdivision may not be less than  
3           \$100 nor greater than ~~\$1,000~~ \$2,000 for each violation.

4

(END)

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2001-2002 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-3642/2isn  
RJM:.....

INSERT ANALYSIS

This bill makes various changes to the laws governing mortgage bankers and mortgage brokers. Significant changes include:

***Licensed lenders that engage in mortgage banking or mortgage brokering***

Current law requires mortgage bankers and mortgage brokers to be registered with the division of banking in the department of financial institutions (division). Generally, a mortgage banker is a person who originates loans that are secured by mortgages (mortgage loans), sells or services mortgage loans, sells land contracts, or provides escrow services. A mortgage broker is generally a person who, on behalf of another person and for a commission, finds a mortgage loan. Typically, mortgage bankers and mortgage brokers are institutions, not individuals. There are several exemptions from the current definitions of "mortgage banker" and "mortgage broker," including certain lending institutions licensed by the division (licensed lenders).

This bill deletes the exemptions for licensed lenders, thereby requiring licensed lenders who engage in mortgage banking or mortgage brokering to be registered with the division. The bill requires these licensed lenders to obtain a registration no later than the 60th day after the bill becomes law.

***Competency examinations and continuing education***

This bill establishes competency examination and continuing education requirements applicable to certain agents of mortgage bankers and mortgage brokers. Current law does not contain any such requirements. This bill requires each mortgage banker and mortgage broker to designate at least one principal representative who is in charge of the business operations of the mortgage banker or mortgage broker. The bill requires each principal representative, each person who finds or negotiates a mortgage loan for or on behalf of the mortgage banker or mortgage broker, and certain other agents of the mortgage banker or mortgage broker to pass a written test covering primary and subordinate mortgage financing transactions and the laws regulating mortgage bankers and mortgage brokers. These requirements must be satisfied as a condition of the division approving an application for registration as a mortgage banker or mortgage broker or for renewal of registration.

This bill also requires each mortgage banker and mortgage broker, as a condition of renewing its registration, to demonstrate that each principal representative, each person who finds or negotiates a mortgage loan for or on behalf of the mortgage banker or mortgage broker, and certain other agents of the mortgage banker or mortgage broker have successfully completed at least 14 hours of education covering primary and subordinate mortgage financing transactions and the laws regulating mortgage bankers and mortgage brokers. These hours of education must be completed during the two years preceding the date of the application for renewal of registration.

The division, by rule, must establish the content of the competency examination and program of continuing education and must establish standards for approving persons who administer the competency examination or provide the continuing

education. In addition, the bill phases in the competency examination and continuing education requirements. Under the bill, the competency examination requirement first applies to persons who have applications pending with the division on July 2, 2002. The continuing education requirement ~~first apply~~ <sup>applies</sup> to applications for the registration period that begins on July 1, 2004.

***Supervision of certain employees of mortgage bankers mortgage brokers***

Current law specifies that mortgage bankers and mortgage brokers are responsible for, and must supervise, each person who finds or negotiates a mortgage loan for or on behalf of the mortgage banker or mortgage broker and certain other employees of the mortgage banker or mortgage broker. This bill further provides that each principal representative of a mortgage banker or mortgage broker is responsible for and must supervise these persons. The bill also provides that, in certain limited circumstances, this duty of responsibility and supervision must be satisfied by each officer or director of, or owner of at least a 10% interest in, the business of the mortgage banker or mortgage broker.

***Regulation of consumer brokerage agreements***

This bill requires every brokerage agreement between a mortgage broker and a consumer to be in writing, in the form prescribed by rule of the division, and to contain all information required by rule of the division. Under the bill, the division must promulgate these rules for the purpose of facilitating the comparison of similar charges and total charges assessed by different mortgage brokers. The bill also requires a mortgage broker to give a consumer a disclosure statement which contains a brief explanation of the relationship between the consumer and the mortgage broker under the brokerage agreement and the manner in which the mortgage broker may be compensated, and any additional information required by rule of the division. The mortgage broker must explain the content of the disclosure statement and ensure that the consumer initials or signs the statement, acknowledging that the consumer has read and understands the statement. Under the bill, a consumer generally means an individual who seeks or acquires mortgage brokerage services for personal, family, or household purposes. Current law does not contain any similar provisions with regard to mortgage brokers.

***Penalties and limitations on liability***

This bill raises the maximum potential forfeiture (civil penalty) for certain violations of the mortgage banking and mortgage brokering laws from \$1,000 to \$2,000 and increases the maximum potential liability for these violations in certain private causes of action from \$1,000 to \$2,000. The bill also raises the maximum potential fine and imprisonment (criminal penalties) for violating a registration requirement under the mortgage banking and mortgage brokering laws from \$1,000 and six months to \$2,000 and nine months.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

INSERT 2-5

SECTION 1. 224.71 (3) (b) 2. of the statutes is amended to read:



224.71 (3) (b) 2. A credit union which negotiates loans ~~or any licensee under~~  
~~ch. 138 which negotiates loans~~ or any licensed attorney who, incidental to the general  
practice of law, negotiates or offers or attempts to negotiate a loan. ✓

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.71; 1989 a. 45; 1995 a. 27 s. 6590; Stats. 1995 s. 224.71; 1997 a. 27, 145; 2001 a. 16.

SECTION 2. 224.71 (4) (b) 2. of the statutes is amended to read:

224.71 (4) (b) 2. A credit union which negotiates loans ~~or any licensee under~~  
~~ch. 138 which negotiates loans~~ or any licensed attorney who, incidental to the general  
practice of law, negotiates or offers or attempts to negotiate a loan.

History: 1987 a. 359; 1987 a. 403 s. 182; Stats. 1987 s. 440.71; 1989 a. 45; 1995 a. 27 s. 6590; Stats. 1995 s. 224.71; 1997 a. 27, 145; 2001 a. 16.

SECTION 3. 224.71 (b) 2. of the statutes is amended to read.

SECTION 4. 224.71 (4m) of the statutes is created to read:

224.71 (4m) "Principal representative" means an individual that is in charge  
of the business operations of a mortgage banker or mortgage broker. ✓

SECTION 5. 224.72 (4) (e) and (f) of the statutes are created to read:

224.72 (4) (e) *Competency examination*. In addition to the requirements of sub.  
(2) and pars. (a), (d), and (f), as applicable, ~~and except as otherwise provided under~~  
~~this paragraph~~, each principal representative designated under par. (f) by an  
applicant for registration as a mortgage banker and each loan originator employed  
by the applicant shall pass a written test covering primary and subordinate  
mortgage financing transactions and the provisions of this subchapter. The test shall  
be administered by the division's designee and shall comply with the applicable rules  
promulgated by the division under sub. (7p). ✓

(f) *Identity of principal representative*. In addition to the requirements of sub.  
(2) and pars. (a) ~~to~~ (e), ~~and~~ (d), and each applicant for registration as a mortgage  
banker shall designate at least one principal representative and shall document that  
the principal representative accepts the designation. If an applicant fails to make



any designation under this paragraph, or if each designation is inaccurate or incomplete, each officer or director of, or owner of at least a 10% interest in, the business of the mortgage banker is deemed to be in charge of the business operations of the mortgage banker. If a person ceases to act as a principal representative, the mortgage banker shall file an amended designation under this paragraph with the division no later than the 7th day following the date on which the person ceases to act, unless the mortgage banker designated multiple principal representatives and at least one continues to act.

INSERT 3-18

SECTION 6. 224.72 (4m) (c) and (d) of the statutes are created to read:

224.72 (4m) (c) *Competency examination.* In addition to the requirements of sub. (2) and pars. (a), (b), and (d), as applicable, and except as otherwise provided under this paragraph, each principal representative designated under par. (d) by an applicant for registration as a mortgage broker and each loan originator employed by the applicant shall pass a written test covering primary and subordinate mortgage financing transactions and the provisions of this subchapter. The test shall be administered by the division's designee and shall comply with the applicable rules promulgated by the division under sub. (7p).

(d) *Identity of principal representative.* In addition to the requirements of sub. (2) and pars. (a) (b), and (c), as applicable, each applicant for registration as a mortgage broker shall designate at least one principal representative and shall document that the principal representative accepts the designation. If an applicant fails to make any designation under this paragraph, or if each designation is inaccurate or incomplete, each officer or director of, or owner of at least a 10% interest in, the

business of the mortgage broker is deemed to be in charge of the business operations of the mortgage broker. If a person ceases to act as a principal representative, the mortgage broker shall file an amended designation under this paragraph with the division no later than the 7th day following the date on which the person ceases to act, unless the mortgage broker designated multiple principal representatives and at least one continues to act.

INSERT 3-25

x SECTION 7. 224.72 (7) (b) 3. to 5. of the statutes are created to read:

224.72 (7) (b) 3. Submit evidence that is satisfactory to the division that, during the 2 years preceding the date of application, each principal representative designated under sub. (4) (f) and each loan originator employed by the mortgage banker has successfully completed at least 14 hours of education covering primary and subordinate mortgage financing transactions and the provisions of this subchapter, consistent with rules promulgated by the division under sub. (7p).

- ✓ 4. Designate at least one principal representative, as provided under sub. (4) (f).
- ✓ 5. Satisfy the competency examination requirements provided under sub. (4) (e).

INSERT 4-7

- ✓ 4. Designate at least one principal representative, as provided under sub. (4m) (d).
- ✓ 5. Satisfy the competency examination requirements provided under sub. (4m) (c).

INSERT 4-15

**SECTION 8.** 224.73 (1) of the statutes is amended to read:

224.73 (1) **RESPONSIBILITY FOR LOAN ORIGINATOR.** A mortgage banker or a mortgage broker, and each principal representative designated by the mortgage banker or mortgage broker or each person deemed to be in charge of the mortgage banker or mortgage broker under s. 224.72 (4) (f) or (4m) (d), is responsible for, and shall supervise the acts of, a loan originator who registers under s. 224.72 (3) as an employee of the mortgage banker or mortgage broker. A mortgage banker or mortgage broker is also responsible for, and shall supervise the acts of, a loan originator or any other person who otherwise acts on behalf of the mortgage banker or the mortgage broker.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.73; 1991 a. 39; 1995 a. 27 s. 6594; Stats. 1995 s. 224.73; 1997 a. 145.

~~INS 6-3~~

**SECTION 9.** 224.75 (2m) of the statutes is created to read:

224.75 (2m) **CONTINUING EDUCATION RECORDS.** A mortgage banker or mortgage broker shall keep records documenting compliance with s. 224.72 (7) (b) 3. or (c) 3., as applicable, for at least 4 years.

INS 6-3

**SECTION 10. Nonstatutory provisions.**

(1) **PRINCIPAL REPRESENTATIVES OF CURRENT REGISTRANTS AND APPLICANTS.** Each person that, on the effective date of this subsection, holds a certificate of registration as a mortgage banker or mortgage broker, issued by the division of banking, or has an application for such a certificate of registration pending with the division shall file with the division a designation of principal representative no later than the 30th day following the effective date of this subsection. The designation required under this subsection shall be in the form prescribed by the division. In this

in the department of Financial Institutions

subsection, "principal representative" has the meaning given in section 224.71 (4m) of the statutes, as created by this act.

(2) REGISTRATION OF FORMERLY EXEMPT PERSONS. Notwithstanding section 224.72 (1m) of the statutes, any licensee under chapter 138 of the statutes <sup>that</sup> ~~which~~ satisfies the definition of "mortgage banker" or "mortgage broker" under section 224.71 (3) or (4) of the statutes, as affected by this act, shall apply for a certificate of registration under section 224.72 of the statutes, as affected by this act, no later than the 60th day following the effective date of this subsection.

(3) POSITION INCREASE. The authorized FTE positions for the department of financial institutions are increased by 2.0 PR positions, to be funded from the appropriation under section 20.144 (1) (g) of the statutes, for the purpose of administering section 224.72 of the statutes, as affected by this act.

#### **SECTION 11. Initial applicability.**

(1) COMPETENCY EXAMINATION. The treatment of section 224.72 (4) (e), (4m) (c), and (7) (b) 5. and (c) 5. of the statutes first applies to applications for a certificate of registration as a mortgage banker or mortgage broker that are pending with the division of banking on July 2, 2002.

(2) CONTINUING EDUCATION. The treatment of section 224.72 (7) (b) 3. and (c) 3. of the statutes first applies to applications for a certificate of registration as a mortgage banker or mortgage broker for the registration period beginning July 1, 2004.

SPECIAL INSERT "X" ; 1

Section #. 224.72 (4) (title) of the statutes is amended to read:

↓  
REQUIREMENTS

CS

224.72 (4) (title) ADDITIONAL ~~REQUIREMENT~~ FOR MORTGAGE BANKER APPLICANT.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.72; 1989 a. 45; 1991 a. 39; 1993 a. 112; 1995 a. 27 ss. 6210, 6527m, 6528m, 6535m, 6591 to 6593; Stats. 1995 s. 224.72; 1995 a. 465; 1997 a. 27, 35, 145, 191, 237, 252; 1999 a. 9, 32.

↓

# SPECIAL INSERT "X"; 2

Section #. 224.72 (4) (a) (title) of the statutes is amended to read:

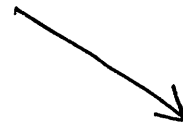
(I)

~~B~~

Special requirement for applicant with

224.72 (4) (a) (title) ~~With~~ a bona fide office.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.72; 1989 a. 45; 1991 a. 39; 1993 a. 112; 1995 a. 27 ss. 6210, 6527m, 6528m, 6535m, 6591 to 6593; Stats. 1995 s. 224.72; 1995 a. 465; 1997 a. 27, 35, 145, 191, 237, 252; 1999 a. 9, 32.



# SPECIAL INSERT "X"; 3

Section #. 224.72 (4) (d) (title) of the statutes is amended to read:

(I)

Special requirement for applicant without

224.72 (4) (d) (title) ~~Without~~ a bona fide office.

History: 1987 a. 359; 1987 a. 403 ss. 182, 256; Stats. 1987 s. 440.72; 1989 a. 45; 1991 a. 39; 1993 a. 112; 1995 a. 27 ss. 6210, 6527m, 6528m, 6535m, 6591 to 6593; Stats. 1995 s. 224.72; 1995 a. 465; 1997 a. 27, 35, 145, 191, 237, 252; 1999 a. 9, 32.

end INSERT "X"



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3642/2dn

RJM: /:....

*cjs*

*Representative Jeskewitz:*

Attached is the mortgage banker/broker draft you requested. I have based this draft on DFI's comments and suggestions, which you provided to me. Please note that the language provided by DFI is not entirely included in this draft. I have tried to clarify the language, where possible, and have also tried to integrate the language into the existing statutory scheme. You may want to have DFI review the draft to make sure that I did not misunderstand their intent. In particular, please note the following: ✓

1. The items concerning the designation of a principal representative have been integrated into the application process under s. 224.72, stats. I have also included a nonstatutory provision governing current registrants and applicants. Please let me know if these provisions are not consistent with your intent. ✓

Under proposed s. 224.72 (4) (e) and (4m) (d), if a designation of principal representative is inaccurate, incomplete, or not made, each officer or director of, or owner of at least a 10% interest in, the business of the mortgage banker or broker is deemed to be in charge of the banker's or broker's business operations. In most, if not all, cases a mortgage banker or broker will have officers or directors *and* owners. The proposed language does not indicate how to determine whether the officers or directors or the owners will be deemed to be in charge. Should the proposed language read instead "each officer or director of *and* owner of at least a 10% interest in the business?" ←

→ *each* (remove xtra space) The principal representative language given to me by DFI contained the following: "(FI has a one-year experience requirement)." I do not know what, if anything, this language is intended to convey. Please let me know if I should have included something in the draft based upon this language.

Please review proposed s. 224.73 (1). ✓ I expanded the treatment to more fully reflect the content of the principal representative provisions.

2. I assumed that the competency examination language provided by DFI was intended to replace the language in the "/1" version of the draft. As a result, please note that this draft no longer exempts from examination persons who are registered for at least 1 years. In order to preserve this exemption, you may want to exempt any person who passed the examination as part of the mortgage banker's or mortgage broker's previous application.

*three*

The language provided by DFI indicated that the competency examination requirements first apply "after July 1, 2002" (i.e., on July 2, 2002). I have drafted this item as an initial applicability provision. Please review the provision to ensure that it is consistent with your intent. Any applications acted on by the division through the close of business on July 1, 2002, would be exempt from the competency examination requirements proposed in the draft.

3. The materials provided by DFI indicated that DFI estimates a need for at least 2 new full-time employees to administer the mortgage banking and brokering law, as affected by this draft. This bill provides 2.0 FTE PR positions for this purpose.

4. Your redraft instructions noted that you were considering addressing two additional issues: (a) eliminating the exemption for licensed lenders and (b) making the requirements for mortgage bankers and mortgage brokers more uniform. This draft eliminates the exemption for licensed lenders and gives licensed lenders who are currently exempt 60 days to apply for a certificate of registration. In addition, due to the language proposed by DFI, this draft imposes examination and continuing education requirements on *both* mortgage bankers and mortgage brokers.

Please feel free to call with any questions or if you desire any changes to the draft.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: robert.marchant@legis.state.wi.us

## Marchant, Robert

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**From:** Bilot, Erin  
**Sent:** Friday, February 01, 2002 1:15 PM  
**To:** Marchant, Robert  
**Cc:** 'Peg Partenfelder'  
**Subject:** Mortgage Brokers Draft (LRB 3642/3)

Rob,  
As if you don't have enough to do, I have one additional redraft (which, I'll be quite honest, I can't promise will be the last). We need some changes in the mortgage brokers legislation. Thank you for changing the draft to affect only loan originators. Now we would like to eliminate the continuing education, but add that for license renewal the person would have to take a competency exam (it would be shorter than the initial licensing exam - just to show that the licensee is current and up to date). I think that the compliance and checks of this would be the same as the initial licensing exam.  
Please let me know if you have any questions.  
Thanks again!

Erin Bilot  
Office of Suzanne Jeskewitz  
State Representative  
24th Assembly District



State of Wisconsin  
2001 - 2002 LEGISLATURE

*2001*  
2001 BILL

LRB-3642/2

RJM:cjs:pg

*stays*

*NOTE*

*Reger Cat*

1 AN ACT *to renumber* 224.71 (1c); *to amend* 224.71 (3) (b) 2., 224.71 (4) (b) 2.,  
2 224.72 (4) (title), 224.72 (4) (a) (title), 224.72 (4) (d) (title), 224.72 (4m) (title),  
3 224.72 (4m) (a) (title), 224.72 (4m) (b) (title), 224.72 (5) (b), 224.73 (1), 224.77  
4 (1m) (a), 224.80 (1) and 224.80 (2) (a) 1.; and *to create* 224.71 (1d), 224.71 (4m),  
5 224.72 (4) (e) and (f), 224.72 (4m) (c) and (d), 224.72 (7) (b) 3. to 5., 224.72 (7)  
6 (c) 3. to 5., 224.72 (7p), 224.75 (2m) and 224.79 of the statutes; **relating to:**  
7 qualifications *of certain agents of mortgage bankers and mortgage brokers,*  
8 ~~for a mortgage banker or mortgage broker registration,~~  
9 consumer mortgage brokerage agreements, granting rule making authority,  
and providing a penalty.

**Analysis by the Legislative Reference Bureau**

This bill makes various changes to the laws governing ~~mortgage bankers and mortgage brokers~~. Significant changes include:

**Licensed lenders that engage in mortgage banking or mortgage brokering**

Current law requires mortgage bankers and mortgage brokers to be registered with the division of banking in the department of financial institutions (division). Generally, a mortgage banker is a person who originates loans that are secured by mortgages (mortgage loans), sells or services mortgage loans, sells land contracts, or

*mortgage banking  
and mortgage  
brokering*

**BILL**

provides escrow services. A mortgage broker is generally a person who, on behalf of another person and for a commission, finds a mortgage loan. Typically, mortgage bankers and mortgage brokers are institutions, not individuals. There are several exemptions from the current definitions of "mortgage banker" and "mortgage broker," including certain lending institutions licensed by the division (licensed lenders).

This bill deletes the exemptions for licensed lenders, thereby requiring licensed lenders who engage in mortgage banking or mortgage brokering to be registered with the division. The bill requires these licensed lenders to obtain a registration no later than the 60th day after the bill becomes law.

**Competency examinations and continuing education**

This bill establishes competency examination and continuing education requirements applicable to certain agents of mortgage bankers and mortgage brokers. Current law does not contain any such requirements. ~~This bill requires each mortgage banker and mortgage broker to designate at least one principal representative who is in charge of the business operations of the mortgage banker or mortgage broker. The bill requires each principal representative, each person who finds or negotiates a mortgage loan for or on behalf of the mortgage banker or mortgage broker, and certain other agents of the mortgage banker or an application mortgage broker to pass a written test covering primary and subordinate mortgage financing transactions and the laws regulating mortgage bankers and mortgage brokers. These requirements must be satisfied as a condition of the division approving an application for registration as a mortgage banker or mortgage broker or for renewal of registration.~~

~~This bill also requires each mortgage banker and mortgage broker, as a condition of renewing the registration, to demonstrate that each principal representative, each person who finds or negotiates a mortgage loan for or on behalf of the mortgage banker or mortgage broker, and certain other agents of the mortgage banker or mortgage broker have successfully completed at least 14 hours of education covering primary and subordinate mortgage financing transactions and the laws regulating mortgage bankers and mortgage brokers. These hours of education must be completed during the two years preceding the date of the application for renewal of registration.~~

The division, by rule, must establish the content of the competency examination and program of continuing education and must establish standards for approving persons who administer the competency examination or provide the continuing education. In addition, the bill phases in the competency examination and continuing education requirements. Under the bill, the competency examination requirement first applies to persons who have applications pending with the division on July 2, 2002. The continuing education requirement first applies to applications for the registration period that begins on July 1, 2004.

**Supervision of certain employees of mortgage bankers mortgage brokers**

Current law specifies that mortgage bankers and mortgage brokers are responsible for, and must supervise, each person who finds or negotiates a mortgage loan for or on behalf of the mortgage banker or mortgage broker and certain other

called  
loan  
originators

This bill  
requires an  
applicant for  
registration as  
a loan  
originator

A loan  
originator  
is generally  
a

This  
requirement

loan originator

successfully  
complete

**BILL**

employees of the mortgage banker or mortgage broker. This bill further provides that each principal representative of a mortgage banker or mortgage broker is responsible for and must supervise these persons. The bill also provides that, in certain limited circumstances, this duty of responsibility and supervision must be satisfied by each officer or director of, or owner of at least a 10% interest in, the business of the mortgage banker or mortgage broker.

***Regulation of consumer brokerage agreements***

This bill requires every brokerage agreement between a mortgage broker and a consumer to be in writing, in the form prescribed by rule of the division, and to contain all information required by rule of the division. Under the bill, the division must promulgate these rules for the purpose of facilitating the comparison of similar charges and total charges assessed by different mortgage brokers. The bill also requires a mortgage broker to give a consumer a disclosure statement which contains a brief explanation of the relationship between the consumer and the mortgage broker under the brokerage agreement and the manner in which the mortgage broker may be compensated, and any additional information required by rule of the division. The mortgage broker must explain the content of the disclosure statement and ensure that the consumer initials or signs the statement, acknowledging that the consumer has read and understands the statement. Under the bill, a consumer generally means an individual who seeks or acquires mortgage brokerage services for personal, family, or household purposes. Current law does not contain any similar provisions with regard to mortgage brokers.

***Penalties and limitations on liability***

This bill raises the maximum potential forfeiture (civil penalty) for certain violations of the mortgage banking and mortgage brokering laws from \$1,000 to \$2,000 and increases the maximum potential liability for these violations in certain private causes of action from \$1,000 to \$2,000. The bill also raises the maximum potential fine and imprisonment (criminal penalties) for violating a registration requirement under the mortgage banking and mortgage brokering laws from \$1,000 and six months to \$2,000 and nine months.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

- 1           **SECTION 1.** 224.71 (1c) of the statutes is renumbered 224.71 (1e).
- 2           **SECTION 2.** 224.71 (1d) of the statutes is created to read:

## BILL

1 224.71 (1d) "Consumer" means a person other than an organization, as defined  
 2 in s. 421.301 (28), who seeks or acquires mortgage brokerage services for personal,  
 3 family, or household purposes.

4 SECTION 3. 224.71 (3) (b) 2. of the statutes is amended to read:

5 224.71 (3) (b) 2. A credit union which negotiates loans ~~or any licensee under~~  
 6 ~~ch. 138 which negotiates loans~~ or any licensed attorney who, incidental to the general  
 7 practice of law, negotiates or offers or attempts to negotiate a loan.

8 SECTION 4. 224.71 (4) (b) 2. of the statutes is amended to read:

9 224.71 (4) (b) 2. A credit union which negotiates loans ~~or any licensee under~~  
 10 ~~ch. 138 which negotiates loans~~ or any licensed attorney who, incidental to the general  
 11 practice of law, negotiates or offers or attempts to negotiate a loan.

12 SECTION 5. 224.71 (4m) of the statutes is created to read:

13 224.71 (4m) "Principal representative" means an individual that is in charge  
 14 of the business operations of a mortgage banker or mortgage broker.

15 3 SECTION 6. 224.72 (4) (title) of the statutes is amended to read:

16 224.72 (4) (title) ADDITIONAL REQUIREMENT REQUIREMENTS FOR ~~MORTGAGE BANKER~~

17 APPLICANT.

18 SECTION 7. 224.72 (4) (a) (title) of the statutes is amended to read:

19 224.72 (4) (a) (title) ~~With~~ Special requirement for applicant with a bona fide  
 20 office.

21 SECTION 8. 224.72 (4) (d) (title) of the statutes is amended to read:

22 224.72 (4) (d) (title) ~~Without~~ Special requirement for applicant without a bona  
 23 fide office.

24 SECTION 9. 224.72 (4) (b) and (c) of the statutes are created to read:

(C9) LOAN ORIGINATOR

plain

(3)(b)

15

4 Sec. RN; 224.72 (3) ~~(except 224.72 (3) (b) and (c))~~; 224.72 (3) (a).

## BILL

(B)  
 (3)(b)

1       224.72 (4)(c) ~~Competency examination~~. In addition to the requirements of sub.  
 2       (2) ~~and pars. (a), (d), and (e), as applicable~~, each ~~principal representative designated~~  
 3       ~~under par. (4)(b)~~ applicant for registration as a ~~mortgage banker~~ and each loan  
 4       originator ~~employed by the applicant~~ shall pass a written test covering primary and  
 5       subordinate mortgage financing transactions and the provisions of this subchapter.  
 6       The test shall be administered by the division's designee and shall comply with the  
 7       applicable rules promulgated by the division under sub. (7p).

8       (f) ~~Identity of principal representative~~. In addition to the requirements of sub.  
 9       (2) and pars. (a), (d), and (e), as applicable, each applicant for registration as a  
 10      mortgage banker shall designate at least one principal representative and shall  
 11      document that the principal representative accepts the designation. If an applicant  
 12      fails to make any designation under this paragraph, or if each designation is  
 13      inaccurate or incomplete, each officer or director of, or owner of at least a 10% interest  
 14      in, the business of the mortgage banker is deemed to be in charge of the business  
 15      operations of the mortgage banker. If a person ceases to act as a principal  
 16      representative, the mortgage banker shall file an amended designation under this  
 17      paragraph with the division no later than the 7th day following the date on which  
 18      the person ceases to act, unless the mortgage banker designated multiple principal  
 19      representatives and at least one continues to act.

20       SECTION 10. 224.72 (4m) (title) of the statutes is amended to read:

21       224.72 (4m) (title) ~~ADDITIONAL REQUIREMENT~~ REQUIREMENTS FOR MORTGAGE  
 22       BROKER APPLICANT.

23       SECTION 11. 224.72 (4m) (a) (title) of the statutes is amended to read:

24       224.72 (4m) (a) (title) ~~With a~~ Special requirement for applicant with bona fide  
 25       office.



## BILL

1 **SECTION 12.** 224.72 (4m) (b) (title) of the statutes is amended to read:

2 224.72 (4m) (b) (title) ~~Without a~~ Special requirement for applicant without  
3 bona fide office.

4 **SECTION 13.** 224.72 (4m) (c) and (d) of the statutes are created to read:

5 224.72 (4m) (c) *Competency examination.* In addition to the requirements of  
6 sub. (2) and pars. (a), (b), and (d), as applicable, each principal representative  
7 designated under par. (d) by an applicant for registration as a mortgage broker and  
8 each loan originator employed by the applicant shall pass a written test covering  
9 primary and subordinate mortgage financing transactions and the provisions of this  
10 subchapter. The test shall be administered by the division's designee and shall  
11 comply with the applicable rules promulgated by the division under sub. (7p).

12 (d) *Identity of principal representative.* In addition to the requirements of sub.  
13 (2) and pars. (a), (b), and (c), as applicable, each applicant for registration as a  
14 mortgage broker shall designate at least one principal representative and shall  
15 document that the principal representative accepts the designation. If an applicant  
16 fails to make any designation under this paragraph, or if each designation is  
17 inaccurate or incomplete, each officer or director of, or owner of at least a 10% interest  
18 in, the business of the mortgage broker is deemed to be in charge of the business  
19 operations of the mortgage broker. If a person ceases to act as a principal  
20 representative, the mortgage broker shall file an amended designation under this  
21 paragraph with the division no later than the 7th day following the date on which  
22 the person ceases to act, unless the mortgage broker designated multiple principal  
23 representatives and at least one continues to act.

24 **SECTION 14.** 224.72 (5) (b) of the statutes is amended to read:

## BILL

plain  
comm

Sub. (3)

224.72 (5) ~~(b) Mortgage broker or mortgage lender~~ Except as provided in sub.

(7m), upon receiving a properly completed application for registration as a ~~mortgage~~  
~~broker or mortgage lender~~ <sup>plain → loan originator</sup> and the fee specified in rules promulgated under sub.

(8) ~~and satisfactory evidence~~ <sup>delete</sup> upon an applicant's compliance with ~~sub. (7m)~~ <sup>plain</sup>

~~the division may issue to the applicant a certificate of~~ <sup>Score</sup>  
 registration as a ~~mortgage broker or mortgage lender~~ <sup>loan originator ← plain</sup>

SECTION 15. 224.72 (7) (b) 3. to 5. of the statutes are created to read:

(d) 224.72 (7) (b) 3. Submit evidence that is satisfactory to the division that, during  
 the 2 years preceding the date of application, each principal representative  
 designated under sub. (4) (d) and each ~~loan originator~~ <sup>the applicant</sup> employed by the mortgage  
 broker has successfully completed at least 14 hours of education covering primary  
 and subordinate mortgage financing transactions and the provisions of this  
 subchapter, consistent with rules promulgated by the division under sub. (7p).

4. Designate at least one principal representative, as provided under sub. (4)

5. Satisfy the competency examination requirements provided under sub. (4)

(3) (b).

SECTION 16. 224.72 (7) (c) 3. to 5. of the statutes are created to read:

224.72 (7) (c) 3. Submit evidence that is satisfactory to the division that, during  
 the 2 years preceding the date of application, each principal representative  
 designated under sub. (4m) (d) and each loan originator who acts for or on behalf of  
 the mortgage broker has successfully completed at least 14 hours of education  
 covering primary and subordinate mortgage financing transaction and the  
 provisions of this subchapter, consistent with rules promulgated by the division  
 under sub. (7p).

An applicant for renewal of a certificate of registration as a loan originator shall,  
 as part of the application, do the following: (P)

**BILL**

1. 4. Designate at least one principal representative, as provided under sub. (4m)

2. (d).

3. 5. Satisfy the competency examination requirements provided under sub. (4m)

4. (e).

5. **SECTION 17.** 224.72 (7p) of the statutes is created to read:

6. **224.72 (7p) RULES FOR COMPETENCY EXAMINATION AND CONTINUING EDUCATION**  
 7. **REQUIREMENTS.** The division shall promulgate rules establishing requirements for all  
 8. of the following:

9. (a) The content of examinations in the law of mortgage banking and mortgage  
 10. brokering under subs. (4) (e) and (4m) (e) and the curricula of education under sub. (7) (b) or (c) or (d).

11. (b) The approval of any persons who administer examinations under subs. (4) (e) or (4m) (e) or provide education under sub. (7) (b) or (c) or (d).

12. **SECTION 18.** 224.73 (1) of the statutes is amended to read:

13. **224.73 (1) RESPONSIBILITY FOR LOAN ORIGINATOR.** A mortgage banker or a  
 14. mortgage broker, and each principal representative designated by the mortgage  
 15. banker or mortgage broker or each person deemed to be in charge of the mortgage  
 16. banker or mortgage broker under s. 224.72 (4) (f) or (4m) (d), is responsible for, and  
 17. shall supervise the acts of, a loan originator who registers under s. 224.72 (3) as an  
 18. employee of the mortgage banker or mortgage broker. A mortgage banker or  
 19. mortgage broker is also responsible for, and shall supervise the acts of, a loan  
 20. originator or any other person who otherwise acts on behalf of the mortgage banker  
 21. or the mortgage broker.

22. **SECTION 19.** 224.75 (2m) of the statutes is created to read:

## BILL

loan  
originator

224.755

bold, no small caps

1 ~~224.75 (2)(b)~~ CONTINUING EDUCATION RECORDS. A ~~mortgage banker or mortgage~~  
2 ~~broker~~ shall keep records documenting compliance with s. 224.72 (7) ~~(b) 3. or (d)~~  
3 ~~as applicable~~, for at least 4 years. (d)

4 SECTION 20. 224.77 (1m) (a) of the statutes is amended to read:

5 224.77 (1m) (a) The division may assess against a person who is registered  
6 under this chapter a forfeiture of not more than \$1,000 \$2,000 for each violation  
7 enumerated under sub. (1) (a) to (o) or (r).

8 SECTION 21. 224.79 of the statutes is created to read:

9 **224.79 Consumer mortgage brokerage agreements and consumer**  
10 **disclosures. (1) FORM AND CONTENT OF CONSUMER MORTGAGE BROKERAGE AGREEMENTS.**  
11 Every contract between a mortgage broker and a consumer under which the  
12 mortgage broker agrees to provide brokerage services to the consumer shall be in  
13 writing, in the form prescribed by rule of the division, and shall contain all  
14 information required by rule of the division. The division shall promulgate rules to  
15 administer this subsection. The division shall design these rules to facilitate the  
16 comparison of similar charges and total charges assessed by different mortgage  
17 brokers.

18 (2) CONSUMER DISCLOSURE STATEMENT. Before entering into a contract with a  
19 consumer to provide brokerage services, a mortgage broker shall give the consumer  
20 a copy of a consumer disclosure statement, explain the content of the statement, and  
21 ensure that the consumer initials or signs the statement, acknowledging that the  
22 consumer has read and understands the statement. The consumer disclosure  
23 statement shall contain a brief explanation of the relationship between the consumer  
24 and the mortgage broker under the proposed contract, a brief explanation of the  
25 manner in which the mortgage broker may be compensated under the proposed

**BILL**

1 contract, and any additional information required by rule of the division. The  
2 division shall promulgate rules to administer this subsection and, by rule, shall  
3 specify the form and content of the consumer disclosure statement required under  
4 this subsection.

5 **SECTION 22.** 224.80 (1) of the statutes is amended to read:

6 224.80 (1) PENALTIES. A person who violates s. 224.72 (1m) may be fined not  
7 more than ~~\$1,000~~ \$2,000 or imprisoned for not more than ~~6~~ 9 months or both. The  
8 district attorney of the county where the violation occurs shall enforce the penalty  
9 under this subsection on behalf of the state.

10 **SECTION 23.** 224.80 (2) (a) 1. of the statutes is amended to read:

11 224.80 (2) (a) 1. Twice the amount of the cost of loan origination connected with  
12 the transaction, except that the liability under this subdivision may not be less than  
13 \$100 nor greater than ~~\$1,000~~ \$2,000 for each violation.

14 **SECTION 24. Nonstatutory provisions.**

15 (1) **PRINCIPAL REPRESENTATIVES OF CURRENT REGISTRANTS AND APPLICANTS.** Each  
16 person that, on the effective date of this subsection, holds a certificate of registration  
17 as a mortgage banker or mortgage broker, issued by the division of banking in the  
18 department of financial institutions, or has an application for such a certificate of  
19 registration pending with the division shall file with the division a designation of  
20 principal representative no later than than the 30th day following the effective date  
21 of this subsection. The designation required under this subsection shall be in the  
22 form prescribed by the division. In this subsection, "principal representative" has  
23 the meaning given in section 224.71 (4m) of the statutes, as created by this act.

24 ~~(2)~~ **REGISTRATION OF FORMERLY EXEMPT PERSONS.** Notwithstanding section 224.72  
25 (1m) of the statutes, any licensee under chapter 138 of the statutes that satisfies the

**BILL**

1 definition of "mortgage banker" or "mortgage broker" under section 224.71 (3) or (4)  
2 of the statutes, as affected by this act, shall apply for a certificate of registration  
3 under section 224.72 of the statutes, as affected by this act, no later than the 60th  
4 day following the effective date of this subsection. ✓

5 ~~(3)~~ POSITION INCREASE. The authorized FTE positions for the department of  
6 financial institutions are increased by 2.0 PR positions, to be funded from the  
7 appropriation under section 20.144 (1) (g) of the statutes, for the purpose of  
8 administering section 224.72 of the statutes, as affected by this act. ✓

9 **SECTION 25. Initial applicability.**

10 ~~(1)~~ COMPETENCY EXAMINATION. The treatment of section 224.72 ~~(1), (2), (3), (4), (5), (6),~~  
11 and ~~(7) (b) 5 and (c) 5~~ <sup>(d) 2.</sup> of the statutes first applies to applications for a certificate of  
12 registration as a ~~mortgage banker or mortgage broker~~ <sup>loan originator</sup> that are pending with the  
13 division of banking on July 2, 2002. ✓ <sup>(d) 1.</sup>

14 ~~(2)~~ CONTINUING EDUCATION. The treatment of section 224.72 (7) ~~(b) 3 and (c) 3~~  
15 of the statutes first applies to applications for a certificate of registration as a  
16 ~~mortgage banker or mortgage broker~~ <sup>loan originator</sup> for the registration period beginning July 1,  
17 2004.

18 (END)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3642/2dn

RJM:cjs:pg

December 6, 2001

*This draft retains  
the provisions regulating  
consumer brokerage  
agreements, ~~which~~ these  
provisions apply to mortgage  
brokers. Please let me  
know if I have  
misunderstood your  
intent.*

*and your instruction to  
apply the draft only to loan  
originators*

*As you  
review the  
draft*

Representative Jeskewitz:

Attached is the mortgage banker/broker draft you requested. I have based this draft on DFI's comments and suggestions, which you provided to me. ~~Please note that the language provided by DFI is not entirely included in this draft. I have tried to clarify the language, where possible, and have also tried to integrate the language into the existing statutory scheme. You may want to have DFI review the draft to make sure that I did not misunderstand their intent. In particular, please note the following:~~

- ~~1. The items concerning the designation of a principal representative have been integrated into the application process under s. 224.72, stats. I have also included a nonstatutory provision governing current registrants and applicants. Please let me know if these provisions are not consistent with your intent.~~

~~Under proposed s. 224.72 (4) (e) and (4m) (d), if a designation of principal representative is inaccurate, incomplete, or not made, each officer or director of, or owner of at least a 10% interest in, the business of the mortgage banker or broker is deemed to be in charge of the banker's or broker's business operations. In most, if not all, cases a mortgage banker or broker will have officers or directors and owners. The proposed language does not indicate how to determine whether the officers or directors or the owners will be deemed to be in charge. Should the proposed language read instead "each officer or director of and each owner of at least a 10% interest in the business"?~~

~~The principal representative language given to me by DFI contained the following: "(FI has a one-year experience requirement)." I do not know what, if anything, this language is intended to convey. Please let me know if I should have included something in the draft based upon this language.~~

~~Please review proposed s. 224.73 (1). I expanded the treatment to more fully reflect the content of the principal representative provisions.~~

- ~~2. I assumed that the competency examination language provided by DFI was intended to replace the language in the "/>~~

The language provided by DFI indicated that the competency examination requirements first apply "after July 1, 2002" (i.e., on July 2, 2002). I have drafted this item as an initial applicability provision. Please review the provision to ensure that it is consistent with your intent. Any applications acted on by the division through the close of business on July 1, 2002, would be exempt from the competency examination requirements proposed in the draft.

3. The materials provided by DFI indicated that DFI estimates a need for at least <sup>two</sup> new full-time employees to administer the mortgage banking and brokering law, as affected by this draft. This bill provides 2.0 FTE PR positions for this purpose.

4. Your redraft instructions noted that you were considering ~~addressing two additional issues (a) eliminating the exemption for licensed lenders and (b) making the requirements for mortgage bankers and mortgage brokers more uniform~~. This draft eliminates <sup>this</sup> ~~the~~ exemption ~~for licensed lenders~~ and gives licensed lenders who are currently exempt 60 days to apply for a certificate of registration. ~~In addition, due to the language proposed by DFI, this draft imposes examination and continuing education requirements on both mortgage bankers and mortgage brokers.~~

Please feel free to call with any questions or if you desire any changes to the draft.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: robert.marchant@legis.state.wi.us



**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-3642/3dn  
RJM:cjs:rs

December 7, 2001

Representative Jeskewitz:

Attached is the mortgage banker/broker draft you requested. I have based this draft on DFI's comments and suggestions, which you provided to me and your instruction to apply the draft only to loan originators. As you review the draft, please note the following:

1. This draft retains the provisions regulating consumer brokerage agreements. These provisions apply to mortgage brokers. Please let me know if I have misunderstood your intent.
2. I assumed that the competency examination language provided by DFI was intended to replace the language in the "1" version of the draft. As a result, please note that this draft no longer exempts from examination persons who are registered for at least three years.

The language provided by DFI indicated that the competency examination requirements first apply "after July 1, 2002" (i.e., on July 2, 2002). I have drafted this item as an initial applicability provision. Please review the provision to ensure that it is consistent with your intent. Any applications acted on by the division through the close of business on July 1, 2002, would be exempt from the competency examination requirements proposed in the draft.

3. The materials provided by DFI indicated that DFI estimates a need for at least two new full-time employees to administer the mortgage banking and brokering law, as affected by this draft. This bill provides 2.0 FTE PR positions for this purpose.
4. Your redraft instructions noted that you were considering eliminating the exemption for licensed lenders. This draft eliminates this exemption and gives licensed lenders who are currently exempt 60 days to apply for a certificate of registration.

Please feel free to call with any questions or if you desire any changes to the draft.

Robert J. Marchant  
Legislative Attorney  
Phone: (608) 261-4454  
E-mail: robert.marchant@legis.state.wi.us

## Emery, Lynn

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**From:** Emery, Lynn  
**Sent:** Monday, December 10, 2001 11:38 AM  
**To:** Rep.Jeskewitz  
**Subject:** LRB-3642/3 (attached as requested)

Lynn Emery

Lynn Emery - Program Asst. (PH. 608-266-3561)  
(E-Mail: [lynn.emery@legis.state.wi.us](mailto:lynn.emery@legis.state.wi.us)) (FAX: 608-264-6948)

Legislative Reference Bureau - Legal Section - Front Office  
100 N. Hamilton Street - 5th Floor  
Madison, WI 53703

12/10/2001

## Marchant, Robert

**From:** Marchant, Robert  
**Sent:** Wednesday, February 06, 2002 4:10 PM  
**To:** Bilot, Erin  
**Subject:** RE: Mortgage Brokers Draft

Erin--

TCF Em 2-7-02

I received your request for additional changes. I have a couple of questions, though. I left you a message to call me, but you might want to reflect upon these questions before you do.

1. By "commercial banks" do you mean the banking institutions described in s. 224.71 (3) (b) 1. and (4) (b) 1., stats., and credit unions described in s. 224.71 (3) (b) 2. and (4) (b) 2., stats.?

2. There are three possible interpretations of the redraft instructions. I'll list them in order from most limited to most sweeping. Which one do you intend?

a. Exempt loan originators who are employed by subsidiaries of commercial banks from the ~~continuing education~~ requirements established under the bill. *I never saw*

b. Exempt loan originators who are employed by subsidiaries of commercial banks from all registration requirements applicable under current law.

c. Exempt all subsidiaries of commercial banks that engage in mortgage banking or mortgage brokering (and, consequently, the loan originators employed by the subsidiaries) from all registration requirements applicable under current law.

Please feel free to call if you'd like to discuss these questions. I can't proceed with the redraft until I hear further from you. If you are able to get back to me on Thursday by mid-afternoon or thereabouts, I should have a chance to get you the redraft in time for the hearing on the 14th. I look forward to hearing from you.

Rob

-----Original Message-----

**From:** Bilot, Erin  
**Sent:** Wednesday, February 06, 2002 3:06 PM  
**To:** Marchant, Robert  
**Cc:** 'peggypr@patrickessie.com'  
**Subject:** Mortgage Brokers Draft

Rob,

I'm surprised that you haven't put a block on my e-mails yet. I have yet another addition to the mortgage brokers legislation (LRB 3642/3). I'd sent you an earlier e-mail asking for two changes to continuing ed. and license renewal. Anyway, there was a concern raised and we would like to know if there was language that you could add that would ensure that licensed loan originators that work for subsidiaries of commercial loan banks would not be subject to this new legislation (the licensed loan originators of the commercial bank are not covered by this bill - we just want to ensure that their subsidiaries aren't covered either). Is that possible?

Also, just as an FYI, we're going to hold a hearing on the LRB that we have on Thursday, February 14<sup>th</sup>. After that hearing and before the exec we'll have the new draft introduced as a substitute amendment. (Unless you really are superman and can get the new draft to us before then, but I'd be amazed!) Just thought I'd let you know what our time frame is. Also, we're going to try and get Sen. Erpenbach to be the Senate lead of a companion bill, so you may be getting a call from them.

Thanks again for everything.

Erin

Erin Bilot  
Office of Suzanne Jeskewitz  
State Representative

